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January 8, 2025

Via ECF

Hon. Robert W. Lehrburger  
United States Magistrate Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: Handberry v. Thompson, 1:96-cv-6161 (GBD/RWL)

Dear Judge Lehrburger:

We write to update the Court on the status of the parties' negotiations regarding a process to ensure compliance with the Federal Education Rights and Privacy Act of 1974 ("FERPA").

As the Court knows, Plaintiffs have long requested information from Defendants as part of their efforts to address Defendants' systemic denial of high school education to students in the custody of the New York City Department of Correction. Defendants, in response, have asserted that certain of the sought information is protected by FERPA and cannot be disclosed to Plaintiffs' counsel.

Defendants raised this issue during the last conference before the Court on December 12, 2024. In response, the Court directed the parties to collaborate and submit a joint proposal ensuring FERPA compliance. *See* Tr. 43:22–45:6. Defendants proposed December 30, 2024, as a date for the proposal's submission. *See id.*

On December 30, 2024, Defendants requested an extension until today to submit that proposal; Plaintiffs consented to Defendants' request. *See* ECF 366. The Court granted the request for an extension on January 2, 2025. *See* ECF No. 367.

Plaintiffs have repeatedly sought to engage with Defendants to reach a mutually agreeable information-sharing process compliant with FERPA. Those efforts have been repeatedly stymied by Defendants' delay. For example, on December 18, 2024, Plaintiffs shared a proposed order concerning the FERPA process with Defendants, and followed up with Defendants on December 20, December 26, December 27, January 3, January 6, and January 7. It was not until this afternoon at 2:56 p.m. that Defendants shared their first feedback on that draft.

**Justice in Every Borough.**

The parties have also exchanged drafts of a proposed notice to class members regarding FERPA. Most recently, on January 3, 2025, Plaintiffs provided comments to the draft notice and highlighted two issues requiring further investigation by Defendants and one issue that remains subject to dispute between the parties. Plaintiffs followed up with Defendants on both January 6 and January 7, but it again was not until 2:56 p.m. today that Defendants offered minimal edits and comments to the notice. Defendants did not provide substantive responses to the three issues that Plaintiffs had flagged.

Unfortunately, as a result of the timing of Defendants' responses and the remaining unresolved issues, the parties cannot meet today's deadline. Plaintiffs are concerned about the delay in finalizing a plan for FERPA compliance. Plaintiffs require the information that Defendants assert is protected by FERPA to assess Defendants' compliance in this case and to determine a path forward. Accordingly, Plaintiffs request that the Court extend the deadline by which the parties must submit a proposal ensuring FERPA compliance to January 10, 2025. Plaintiffs propose that, on that date, the parties either submit a joint proposal or submit competing proposals for the Court's resolution.<sup>1</sup>

We thank the Court for its attention to this matter and are available to address the Court's questions or concerns.

Respectfully submitted,

THE LEGAL AID SOCIETY  
PRISONERS' RIGHTS PROJECT

/s/ Lauren Stephens-Davidowitz

Lauren Stephens-Davidowitz

Antony P. F. Gemmell

Mary Lynne Werlwas

Granted as modified. The deadline is extend to January 15, 2025, by which date the parties will submit either a joint or competing FERPA compliance plans

SO ORDERED:

01/09/2025



HON. ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

PAUL, WEISS, RIFKIND, WHARTON, & GARRISON LLP

Roberto Finzi

Tyler A. Anger

*Counsel for the Plaintiff Class*

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<sup>1</sup> This evening, Plaintiffs proposed to meet with Defendants on January 9 to try to resolve the outstanding issues.